No. 99-1850

In The
Supreme Court of the United States

SANDRA SLAYDON HAWES,
ROBERT A. MUSCARELLA, MANOHAR B. KADAM,
CAROLYN HOLDER,
***pro se*, on behalf of themselves and class of similarly situated persons,**

Petitioners

v.

JOHNSON & JOHNSON, et al,

Respondents

On Petition for Writ of Certiorari
to The United States Court of Appeals for the Third Circuit

APPENDIX SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI VOLUME IV APP. 145-167

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COPY

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UNITED STATES CODE CONGRESSIONAL AND ADMINISTRATIVE NEWS

101st Congress-Second Session 1990

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Volume 5

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PUBLIC LAWS 101-380 to 101-508

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* * * *

F. The burden of proof

The Court in *Betts* erroneously held that section 4(f)(2) is *not* an affirmative defense, and, therefore, that the employee bears the burden of proof under the exception for employee benefit plans.

The Committee wishes to make clear, by adding the last sentence to section 4(f), that the employer bears the burden to plead and prove the defenses and exceptions established in that section. The Committee intends that the amendments made by the bill to section 4(f)(2) - as well as the addition of Section 4(*l*), which establishes certain "safe harbor" defenses for employee benefits independent of section 4(f)(2) - should be interpreted in a manner similar to the way the EEOC and most courts have interpreted the ADEA's other affirmative defense, section 4(f)(l). Accordingly, the language of section 4(f)(1) that is commonly understood to signify an affirmative defense ("It shall not be unlawful . . . *to take any action otherwise prohibited"* by the ADEA (emphasis added)) has been incorporated as part of section 4(f)(2) and also section 4(*l*) .

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In this regard, the Committee notes with approval the uniform body of federal court decisions holding that the "bona occupational qualification" exception included in section 4(f))(1) is an affirmative defense for which the employer bears the burden of proof. *See. eg. Heiar v. Crawford County,* 746 F.2d 1197-98 (7th Cir.1984)

cert. denied; 472 U.S. 1027 (1985); *Hoefelman v. Conservation* 718 F-2d 281, 283 (8th Cir.1983). *Accord* 29 CFR 1625.6 (position of EE0C). The Committee likewise endorses the position of EEOC that the "reasonable factors other than age" exception included in section 4(f)(1) is an affirmative defense for which the employer bears the burden of proof (*See* 29 CFR 1625.7), and expresses approval for those circuit court decisions that agree with the EEOC regarding the employer's burden of proof on this exception. *See Criswell v. Western Airlines,* 709 F.2d 544, 552-553 (9thCir. 1982), *affirmed on other grounds,* 472 U.S. 400 (1985). *See also Laugeson v. Anaconda Co.,* 510 F2d 307, 315 (6th Cir. 1975); Cova v. *Coca-Cola Bottling Co.* of *St. Louis,* 574 F.2d 958, 959-60 (8th Cir.1978).

Finally, nothing in this addition to section 4(f), or in the bill as a whole, is intended to disturb existing pre-*Betts* law with respect to the standards for liability or remedies applicable to unions that are signatories to collective bargaining agreements containing provisions challenged under the ADEA.

G. The effective date

* * * *

RECIEVED
MAY 2 6 1995
NICHOLAS H. POLITAN
U.S.D.J.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
DOCKET NO. 94-5332 (NHP)

Civil Action

SANDRA SLAYDON HAWES, ROBERT A. MUSCARELLA and MANORAR B. KADAM,

Plaintiffs on behalf themselves and classes of similarly situated persons,

v.

JOHNSON & JOHNSON, a New Jersey corporation; the SEVERANCE PLAN OF JOHNSON & JOHNSON and AFFILI ATED COMPANIES; its plan administrator, the JOHNSON & JOHNSON PENSION COMMITTEE; McNEIL-PPC, INC., also known as Personal Products Company, a New Jersey corporation; JOHNSON & JOHNSON WORLDWIDE ABSORBENT PRODUCTS,R MATERIALS . RESEARCH, an unincorporate division of Johnson & Johnson; JOHNSON & JOHNSON CONSUMER PRODUCTS, INC.; a New Jersey corporation; JOHNSON

SECOND AMENDED COMPLAINT AND JURY DEMAND

ORGINAL FILED
MAY 30, 1995
WILLIAM T. WALSH
CLERK

& JOHNSON VISION PRODUCTS, INC.,
a Florida corporation; and as
class action defendants, the
affiliates of the Severance Plan
of Johnson & Johnson & Affiliated
Companies, including: "All-COMPANY
A JOHNSON & JOHNSON COMPANY, a
Delaware corporation; ADVANCED
CARE PRODUCTS, INC., a New Jersey
Corporation, CELLULOSE.PRODUCTS
CORP., a New Jersey corporation,
CODMANN & SHURTLEFF INC., CRITIKON,
INC.,. a Florida corporation,

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ETHICON, INC., a Ohio, corporation,
ETHICON ENDO-SURGERY, an
unincorporated entity doing business in
Ohio; IMMUNOBIOLOGY RESEARCH
INSTITUTE, INC., A New Jersey cor-
poration IOLAB CORPORATION, a
California corporation; JANSSEN
PHARMACEUTICA INC., a New Jersey
corporation; JANSSEN RESEARCH
FOUNDATION, an unincorporated
entity; JOHNSON & JOHNSON ADVANCED
MATERIALS COMPANY, a New
Jersey Corporation; JOHNSON & JOHNSON
DEVELOPMENT CORPORATION, a
New Jersey corporation; JOHNSON &
JOHNSON FINANCE CORPORATION, a
New Jersey corporation; JOHNSON &
JOHNSON HEALTH MANAGEMENT, INC., a
New Jersey corporation; JOHNSON &
JOHNSON HOSPITAL SERVICES, INC., a
New Jersey corporation; JOHNSON &

JOHNSON INTERNATIONAL, a New Jersey corporation; JOHNSON & JOHNSON INTERVENTIONAL SYSTEMS COMPANY, a New Jersey corporation; JOHNSON & JOHNSON MEDICAL, INC., a New Jersey corporation; JOHNSON & JOHNSON MERCK CONSUMER PHARMACEUTICALS CO., a New Jersey corporation; JOHNSON & JOHNSON ORTHOPAEDICS, INC., a New Jersey corporation; JOHNSON & JOHNSON SERVICES, INC., a New Jersey corporation; LIFESCAN, INC., a California corporation; McNEIL CONSUMER PRODUCTS COMPANY, a New Jersey corporation; McNEIL SPECIALTY PRODUCTS COMPANY, a New Jersey corporation; NORAMCO, INC., a Georgia corporation; ORTHO BIOTECH INC., a New Jersey corporation; ORTHO DIAGNOSTIC SYSTEMS INC., a New Jersey corporation; ORTHO PHARMACEUTICAL CORPORATION, a Delaware corporation; SITE MICROSURGICAL SYSTEMS, INC., a Pennsylvania corporation; R.W. JOHNSON PHARMACEUTICAL RESEARCH INSTITUTE, an unincorporated entity doing business in New Jersey; THERAKOS, INC., a Florida corporation;

Defendants.

Plaintiffs Sandra Slaydon Hawes, a resident of the Borough of Helmetta, Middlesex County, New Jersey, Robert A. Muscarella, a resident of the town of Monmouth Junction, Middlesex County, New Jersey, and Manohar B. Kadam, a resident of the city of East Brunswick, Middlesex County, by way of complaint against Defendants, Johnson & Johnson; the Severance Plan of Johnson & Johnson and Affiliated Companies; the Johnson & Johnson Pension Committee; McNeil-PPC, Inc.; Johnson & Johnson Worldwide Absorbent Products & Materials Research; Johnson & Johnson Consumer Products, Inc., Johnson & Johnson Vision Products, Inc., and the remaining corporations and unincorporated entities which are affiliated with a qualified severance plan administered by the Johnson & Johnson Pension Committee, for their complaint say:

JURISDICTION

1. Plaintiffs bring this action in their individual capacities and as the representatives of similarly situated classes of individuals to redress acts of discrimination in the terms conditions or privileges of employment on the basis of age, eligibility for retirement, national origin and handicapping condition, which acts are prohibited by the Age Discrimination in Employment Act (ADEA) as amended, 29 U.S.C. §621 et seq., the Older Worker Benefits Protection Act of 1990 (OWBPA); Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000e et seq.; and the New Jersey Law against Discrimination (LAD), N.J.S.A. §§10:5-1 et seq, and to redress the deprivation of rights and employee benefits secured by the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. §§1001 et seq.

* * * *

COUNT ONE

ACTION TO OBTAIN BENEFITS DUE UNDER A QUALIFIED PLAN AND ADDITIONAL EQUITABLE RELIEF

43. Plaintiffs reallege Paragraphs 1 through 42 of their complaint as though fully set forth.

44. Plaintiffs invoke the jurisdiction of this Court over this count of their complaint pursuant to 28 U.S.C. S§1331 and 1337 and 29 U.S.C. S1132(e)(1) in that these claims are authorized by Sections 502(a)(1), (2) and (3) of the Employment Retirement income Security Act of 1974 (ERISA), as codified at 29 U.S.C. S1132(a)(1) through (3).

45. Venue in this court is appropriate pursuant to 29 U.S.C. S1132 (e)(2).

46. The Johnson & Johnson Severance Plan in effect when Plaintiffs were informed that their positions were being eliminated and which was in effect when those positions actually were eliminated provided at least two weeks severance pay per year of service to various groups of employees, including any regular full time salaried employee "whose employment is terminated as a result of an event listed in Article 4. 1 (a) and who elects to retire under a retirement plan of the Company. The listed events include position elimination or a reduction in force.

47. Plaintiffs were regular full-time salaried employees whose positions were eliminated, and they were scheduled to be reduced in force. As such they were eligible for severance pay

as a result of a contingent event unrelated to age.

48. The Johnson & Johnson Severance Plan expressly provided that plaintiffs remain eligible for severance pay even though they elected to retire under a Johnson & Johnson retirement plan.

49. The Johnson & Johnson Severance Plan in effect when Plaintiffs were informed that their positions were being eliminated and which was in effect when those positions actually were eliminated allowed the plan administrator to authorize severance pay in excess of two weeks for each year of service.

50. On or about September 1, 1993, Personal Products Company informed Plaintiff Slaydon Hawes that she was eligible for severance pay totaling $20,092.32 at her biweekly rate of $1,255.77 for 32 weeks starting on October 30, 1993, and continuing until June 10, 1994 or until she became reemployed by Johnson & Johnson or one of its affiliated companies. Plaintiff Hawes has never received this or any other severance payment from Defendants.

51. On or about September 1, 1993, Personal Products Company informed Plaintiff Robert Muscarella that the he would receive severance pay totaling $101,699.91 at his biweekly rate of $2,607.69 for 78 weeks starting on October 30, 1993, and continuing until April 28, 1995, or until he became reemployed by Johnson & Johnson or one of its affiliated companies. Plaintiff Muscarella never received this payment.

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52. On or about September 1, 1993, Personal Products Company informed Plaintiff Manohar B. Kadam that he would receive $90,219.82 at his biweekly rate of $2,315.38 for 78

weeks starting on October 30, 1993, and continuing until April 28, 1995, or until he became reemployed by Johnson & Johnson or one of its affiliated companies. Plaintiff Kadam never received this payment.

53. In October, 1993 Plaintiff Muscarella requested a complete copy of the full plan document for the Johnson & Johnson Severance Plan, and received Exhibit I attached hereto. Exhibit I is a true and correct copy of the Johnson & Johnson Severance Plan in effect on the date of Plaintiffs, terminations, except for an unknown number of pages never provided to Plaintiff Muscarella identifying all the companies affiliated with the Plan.

54. Johnson & Johnson and Personal Products Company as plan sponsors and the Johnson & Johnson Pension Committee as plan administrator failed and continue to fail to respond to Plaintiff Muscarella's repeated requests for the missing pages of the plan document.

55. On December 3, 1993, the Johnson & Johnson Pension Committee in its capacity as plan administrator for the Johnson & Johnson Severance Plan, received an application for severance benefits from Plaintiff Muscarella, submitted in accordance with the procedure set forth *in* the Johnson & Johnson Severance Plan.

56. The Johnson & Johnson Pension Committee in its capacity as plan administrator failed to respond to Plaintiff

Muscarella's application for severance benefits within the time required by the Johnson & Johnson Severance Plan and by federal regulation.

57. On March 4, 1994, more than 90 days from receipt of Plaintiff Muscarella's application for severance benefits,

Johnson & Johnson's Vice President and General Counsel, Frank Bolden, rejected Plaintiff Muscarella's application for severance because "the decision has been made not to permit participation by an employee in both the Severance Plan and VEREP".

58. Johnson & Johnson's vice president and general counsel further informed Plaintiff Muscarella that any severance pay to which he might be entitled had been reduced by the amount of his early retirement benefits to nothing.

59. On March 28.. 1994, Plaintiff Kadam. applied to the Johnson & Johnson Pension Committee for severance benefits in accordance with the Johnson & Johnson Severance Plan's procedures.

60. Johnson & Johnson's general counsel's office informed Plaintiff Kadam that his application for severance had been rejected because "the decision has been made not to permit participation by an employee in both the Severance Plan and VEREP".

61. Johnson & Johnson's general counsel's office further informed Plaintiff Kadam that any severance to which he might be entitled had been reduced by the amount of his early retirement benefits to nothing.

62. In accordance with the procedure set forth in the Johnson & Johnson Severance Plan, Plaintiff Slaydon Hawes applied

on or about April 4, 1994 to the Johnson & Johnson Pension Committee for severance benefits.

63. Johnson & Johnson general counsel's office informed Plaintiff Slaydon Hawes that her application for severance had been rejected because "the decision has been made not to permit participation by an employee in both the Severance Plan and VEREP".

64. Johnson & Johnson's Vice President and Johnson & Johnson's general counsel's office arbitrarily and capriciously denied all Plaintiffs the severance benefits to which they were entitled under the express terms of the Johnson & Johnson Severance Plan.

65. Johnson & Johnson's Vice President and Johnson & Johnson's general counsel's office had no authority to interpret the Johnson & Johnson Severance Plan in such an unreasonable manner or to deny any benefit claim for reasons inconsistent with the Plan documents.

66. The Age Discrimination in Employment Act as amended by the Older Workers' Benefits Protection Act of 1990, 29 U.S.C. S623 (1) (2) (A) (ii) limits any reduction of severance benefit its by pension benefits to the amount of additional pension benefits made available solely as a result of the same contingent event unrelated to age which created severance eligibility.

67. Johnson & Johnson's Vice President and Johnson & Johnson's general counsel's office were aware off but acted in reckless disregard for, this statutory limitation upon the reduction of severance benefits.

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68. Johnson & Johnson's Vice President and Johnson & Johnson's general counsel's office arbitrarily and capriciously unlawfully denied Plaintiffs severance benefits in violation of

the Age Discrimination in Employment Act as amended by the Older Worker's Benefit Act of 1990.

69. Johnson & Johnson's Vice President and Johnson & Johnson's general counsel's office arbitrarily and capriciously ignored both the explicit eligibility provisions of the Johnson & Johnson Severance Plan, and that provision of the Plan which required that it "shall always be construed in compliance with applicable law."

70. By letters dated April 19, 1994, June 6, 1994 and June 8, 1994, Plaintiffs each requested that the Pension Committee as plan administrator review the denials of their severance applications by Johnson & Johnson's vice president and general counsel's office.

71. The Johnson & Johnson Severance Plan as well as 29 Code of Federal Regulations §2560.503-1 (h) (1) (i) required that the plan administrator or other named fiduciary respond to these requests for review within 60 days of receipt if possible, and in any case, to respond after no more than 120 days.

72. Neither the plan administrator nor any named fiduciary nor anyone else provided either a timely or untimely responses to Plaintiffs' requests for review.

73. The failure of Defendants Johnson & Johnson Severance Plan, Johnson & Johnson, the Johnson & Johnson Pension

Committee and its individual members to perform their authorized duties under the Johnson & Johnson Severance Plan and to act in accordance with the claim procedures set forth therein deprived Plaintiffs of a full and fair review of their severance claims and of the fiduciary protection to which they

are entitled as participants in the Johnson & Johnson Severance Plan.

74. By failing to provide Plaintiff Robert Muscarella a complete copy of an instrument under which the plan was established or operated, Defendants Johnson & Johnson Severance Plan, Johnson & Johnson, the Johnson & Johnson Pension Committee and its individual members arbitrarily and without excuse violated their fiduciary and statutory obligations to a plan participant.

75. By failing to pay Plaintiffs severance the amounts to which they are entitled under the terms of the Johnson & Johnson Severance Plan as set forth in the benefits statements provided to them on September 1, 1993, Defendants Johnson & Johnson, the Johnson & Johnson Severance Plan, the Johnson & Johnson Pension Committee and Personal Products Company arbitrarily and without excuse failed to pay benefits in accordance with the express provisions of the qualified plan, and violated their fiduciary and statutory obligations to qualified plan participants.

WHEREFORE, Plaintiffs respectfully pray this Court to:

(a) enter judgement for Plaintiffs by issuing an Order directing Defendants to pay Plaintiff Slaydon Hawes $20,092-32 severance due from October 29, 1993, Robert Muscarella $101,699.91 severance due from October 29, 1993, and Manohar B. Kadam,

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$90,299.82 severance due from October 29, 1993, together with prejudgment and post judgment interest thereon; and

(b) pursuant to 29 U.S.C.§1132(c), assessing a fine of up to $100.00 a day from the date the Johnson & Johnson Severance

Plan Administrator failed to provide Plaintiff Muscarella Plan information to which he was entitled; and

(c) enter an order removing from their positions on the Johnson & Johnson Pension Committee those members who failed to perform their fiduciary duties and replacing them with independent members; and

(d) award Plaintiffs a reasonable attorneys' fee and costs of this action pursuant to 29 U.S.C. -§1131(g); and

(e) grant all other equitable relief to Plaintiffs as the Court may deem just all proper.

COUNT TWO
CLASS CLAIM FOR BENEFITS DUE UNDER A QUALIFIED PLAN

76. Plaintiffs reallege Paragraphs 1 through 75 of their complaint as though fully set forth.

77. Plaintiffs invoke the jurisdiction of this Court over this count of their complaint pursuant to Rule 23(b)(2) and (3) Federal Rules of Civil: Procedure providing for the maintenance of class actions, and under 28 U.S.C. §51331, 1337, 2201 and 2202, and 29 U.S.C. §1132(e)(1) in that these claims for relief are authorized by Sections 502(a)(1), (2) and (3) of the Employment Retirement Income Security Act of 1974 (ERISA), as amended and codified at 29 U.S.C. §1132(a)(1) through (3).

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78. Since 1992 Johnson & Johnson has pursued a policy of streamlining its business and that of its wholly-own subsidiaries and affiliated companies by sharing services

among companies, merging operations, consolidating locations and offering employees enhanced early retirement programs, including the VEREP program.

79. As a result of this effort, Johnson & Johnson reduced its worldwide work force and that of its wholly-owned subsidiaries and affiliated companies from a total of approximately 84,900 employees in 1992 to a total of approximately 81,600 employees in 1993, despite the addition of 900 employees from a newly acquired foreign company.

80. Plaintiffs were affected by this program in that their positions were eliminated and they were reduced in force when Personal Products Company closed its Milltown Engineering Department, New Jersey, and some or all of its functions were consolidated into J&J WAPMR's Milltown operation.

81. Plaintiffs therefore believe that their claims that they were wrongfully denied severance benefits due under the terms of the Johnson & Johnson Severance Plan, and that Defendants breached their statutory and fiduciary duties to plan participants, are typical of claims by other regular full time employees of Defendants Personal Products Company, Johnson & Johnson, Johnson & Johnson Consumer Products, Inc., Johnson & Johnson Vision Products, Inc. or any other Affiliated Company Defendant who at any time since September 8, 1992 accepted early retirement pursuant to Johnson & Johnson's VEREP or similar program at a time when their

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positions were scheduled to be eliminated or reduced in force, and who were denied severance, or who did not apply for severance because they were not informed of the eligibility.

82. Because Plaintiffs were arbitrary denied severance on grounds which apply equally to the similarly situated members of the class they seek to represent, they believe that class members were wrongfully deprived of severance benefits due to them under the terms of a qualified plan.

WHEREFORE, Plaintiffs respectfully pray this Court to:

(a) issue an order pursuant to Rule 23(b)(2) and/or (3) Federal Rules of Civil Procedure certifying Plaintiffs Slaydon Hawes, Muscarella and Kadam. as the representatives of a class composed of regular full time former employees of Defendants Johnson & Johnson, Personal Products Company, Johnson & Johnson Consumer Products, Inc., Johnson & Johnson Vision Products, Inc. or any other Affiliated Company Defendant who since September 8, 1992, accepted early retirement benefits pursuant to Johnson & Johnson's VEREP or similar early retirement program, who believe that they were reduced in force or that their positions scheduled for elimination at the time they accepted participation in the VEREP or similar early retirement program, and who were not paid severance benefits pursuant to the Johnson & Johnson Severance Plan; and

(b) order that Johnson & Johnson pay the expense of notifying potential class members of the pendency of this litigation; and

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(c) enter a declaratory judgement in favor of the class and each of its members declaring that said Defendants unlawfully denied severance benefits due under the Johnson & Johnson Severance Plan to those former employees of Defendants Johnson & Johnson, Personal Products Company, Johnson & Johnson Consumer Products, Inc., Johnson & Johnson Vision Products, Inc. and any other Affiliated Company Defendant

who retired pursuant to Johnson & Johnson's VEREP or similar early retirement program after their positions were scheduled to be eliminated or-they were reduced in Force; and

(d) order specific performance to correct Defendants' wrongful failure to pay to class members the severance benefits due under to Johnson & Johnson Severance Plan; and

(e) award each class member entitled to recover severance benefits prejudgment and post judgment interest on those benefits from the date of separation; and

(f) grant all other relief to class members as the Court may deem just and proper; and

(g) award Plaintiffs a reasonable attorneys' fee and costs of this action to benefit class members.

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COUNT THREE
INDIVIDUAL CLAIMS OF AGE DISCRIMINATION IN DENYING SEVERANCE

83. Plaintiffs reallege Paragraph 1 through 82 of their complaint as though fully set forth.

84. Plaintiffs invoke the jurisdiction of this Court over this count of their complaint pursuant to 28 U.S.C. §§1331, 1343(4), 2201 and 2202, and this court's pendent jurisdiction in that this claim for relief is authorized by the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C §626(c), and the New Jersey Law Against Discrimination (LAD), N.J.S.A. §10:5-13.

85. Severance is included in the term "compensation, terms conditions or privileges of employment" as defined by 29 U.S.C. §623(l) and N.J.S.A. §10:5-12(a), none which may be denied because of any individual's age.

86. Defendants Johnson & Johnson, Johnson & Johnson's Severance Plan, Johnson & Johnson Pension Committee, and Johnson & Johnson's wholly-owned subsidiary, Personal Products Company, discriminated against Plaintiffs in violation of the Age Discrimination in Employment Act and New Jersey's Law Against Discrimination by maintaining and administering a severance policy which offset benefits on a basis prohibited under 29 U. S. C. §623 (1) (2) (A) (ii), disqualified employees otherwise eligible for severance on the basis of age, and disparately impacted older employees, all in violation of the Age Discrimination in Employment Act as amended and codified at 29 U.S.C. §623(a) and by New Jersey's Law Against Discrimination, N.J.S.A. §§10:5-3, 10:5-4 and 10:5-12(a).

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87. Said Defendants treated Plaintiffs and similarly situated employees differently from younger employees on the basis of age by requiring them to forego severance to secure retirement benefits to which they were entitled regardless of their terminations, while allowing terminated employees under the age of 50 to secure unreduced severance while keeping the retirement benefits to which they were entitled.

88. Said Defendants maintained and administered a severance policy which disparately impacted Plaintiffs and similarly situated employees on the basis of age by disqualifying them from severance if they were eligible for early retirement benefits at a time when they were scheduled for termination.

89. Defendants' discriminatory conduct in maintaining and administering severance policies under which Plaintiffs and similarly situated employees were denied severance on the same terms available to similarly situated employees under retirement age was willful in that it was undertaken knowingly and with reckless disregard for the statutory prohibitions upon discrimination on the basis of age in employment.

90. The direct and proximate result of Defendants' discriminatory actions in denying Plaintiffs and similarly situated employees separation or severance pay has been to inflict economic and personal injury upon Plaintiffs, cause them humiliation and suffering, and deprive them of equal employment opportunities and the privileges of employment, including benefits they otherwise

would have been paid in the form of severance and other fringe benefits.

91. As a proximate result of Defendant's discriminatory and wrong act, as set forth above, Plaintiffs and similarly situated employees have suffered personal and economic damage and should be compensated for same.

WHEREFORE, Plaintiffs respectfully pray this Court to:

(a) enter judgment for the Plaintiffs and against Johnson & Johnson, Johnson & Johnson's Severance Plan, the Johnson & Johnson Pension Committee and Personal Products Company by issuing an Order declaring that the practices complained of herein unlawfully discriminate on the basis of age in violation of the Age Discrimination in

Employment Act and New Jersey's Law Against Discrimination; and

(b) awarding judgment for Plaintiffs by issuing an Order directing Defendants Johnson & Johnson, its Pension Committee and Personal Products Company to pay Sandra Slaydon Hawes $20,092.32 severance due from October 29, 1993, Robert Muscarella $101,699.91 severance due from October 29, 1993, and Manohar B. Kadam. $90,299.82 severance due from October 29, 1993, together with prejudgment and post judgment. interest thereon; and

(c) awarding Plaintiffs damages for humiliation, anxiety and emotional distress; and

(d) allowing Plaintiffs liquidated damages in double the amount of their awards pursuant to 29 U.S.C. §626(a); and

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(e) assessing punitive damages for the willful violation of state law; and

(f) awarding Plaintiffs reasonable attorneys' fee and costs of this action pursuant to 42 U.S.C. §1988 and N.J.S.A. §10:5-27; and

(g) granting all other relief to Plaintiffs as the Court may deem just and proper.

* * * *

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Personal Products
MILLTOWN NEW JERSEY 08850 (908) 524-0400

RELEASE

September 1, 1993

For valuable consideration from Personal Products Company/ Johnson and Johnson, receipt of which is hereby acknowledged, Robert A. Muscarella is separated from Personal Products Company/Johnson and Johnson. Robert A. Muscarella will receive separation pay at his biweekly rate of $2,607.69 to be paid biweekly for 78 weeks starting October 30, 1993 and ending April 28, 1995. This amounts to $101,699.91. Robert A. Muscarella hereby releases and forever discharges Personal Products Company, Johnson and Johnson, all J&J subsidiaries and affiliated companies and their officers, directors, agents, successors and assigns (hereafter collectively referred to as the "Company") from any and all rights, causes of action, claims or demands which he has or may have against the Company but not limited to any such rights, causes of action, claims or demands under any equal employment opportunity law, ordinance, regulation or order, included but not limited to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. the Civil Rights Act of 1866 as amended, 42 U.S.C. 1981 et seq., Executive order 11236, as amended, the Age Discrimination in Employment Act of 1967, as amended 29 U.S.C. 621 et seq., and any other applicable federal, state or local constitutional or statutory provision, order or regulation arising from any event or act of omission or commission occurring during the term of his employment with the Company through the date of this release, including any alleged injuries or damages suffered at any time after the date of this release by reason of the continued effects of any such alleged discriminatory acts which occurred an or before the data of this release. It is also agreed that the separation payments being made to you under this paragraph are to be in lieu of and not in addition to any unemployment compensation

payments for the same months or any payments for the same months we might be called upon to make under the terms of your Employee Secrecy Agreement. In the event that you receive any such payments for the same months, we will deduct a comparable amount from the separation payments being made under this paragraph. Also should you become re-employed by Johnson & Johnson or any affiliate, separation payments will cease. Robert A. Muscarella further acknowledges that he has read and understood this agreement and release and further acknowledges that he has had the opportunity to review it with an attorney.

Robert A. Muscarella, further acknowledges that he is executing this agreement and release voluntarily and with, full knowledge of its terms and provisions and of his legal rights with. regard thereto.

You are entitled to 21 days within which to fully consider this Separation Agreement. Following the date that you sign this Agreement, you shall have a period of seven days in which to revoke it.

[end of page 1]

You are advised to consult an attorney regarding this Separation Agreement.

UNSIGNED
Robert A. Muscarella

Dated: _____
State of: _____
County of: _____

On _____, 1993, before me personally came Robert A. Muscarella, sworn by me to be the individual who executed the foregoing RELEASE, and he duly acknowledged that he executed same.

[end of page 2, end of RELEASE] **JA172**